

In re:)	Case No.	RS 05-10147 PC
ANTONIA H. PLOEG,)	Chapter	7
)	Date:	April 25, 2005
)	Time:	9:30 a.m.
)	Place:	U.S. Bankruptcy Court
)		Courtroom 303
Debtor(s).)		3420 Twelfth Street
)		Riverside, CA 92501

FINAL RULING

Violation of Section 110. Preparer is a “bankruptcy petition preparer” within the meaning of 11 U.S.C. Section 110(a)(1). The voluntary petition, schedules, statement of financial affairs and other documents prepared by Preparer for compensation and filing in this case each constitute a “document for filing” within the meaning of 11 U.S.C. Section 110(a)(2).

1 Section 110(g)(1) states that a bankruptcy petition preparer “shall not collect or receive
2 any payment from the debtor ... for the court filing fees in connection with the filing of the
3 petition.” Section 110(g)(2) requires the court to fine a bankruptcy petition preparer up to \$500
4 for each violation of Section 110(g)(1).
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6 In this case, the debtor’s response to paragraph 3 of the Declaration for Debtors Without
7 An Attorney signed by the debtor under penalty of perjury on February 10, 2005, states that
8 debtor paid the court filing fee to Preparer in cash. Preparer admits receiving the filing fee from
9 the debtor. Preparer also admits that she filed the petition and other documents for the debtor, at
10 extra charge, through her messenger and secretarial service, The Lite Touch. Given that
11 Preparer took possession of the filing fee and controlled the ultimate filing of the petition, this
12 court must conclude that Preparer violated 11 U.S.C. Section 110(g)(1). In re Shoup, 290 B.R.
13 768, 777 (Bankr. C.D. Cal. 2003), *aff’d*, 307 B.R. 164 (C.D. Cal. 2004); In re Buck, 290 B.R.
14 758, 767 (Bankr. C.D. Cal. 2003), *aff’d*, 307 B.R. 157 (C.D. Cal. 2004). Accordingly, the court
15 sanctions Preparer the sum of \$50 for violation of 11 U.S.C. Section 110(g)(1).
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17 Disgorgement of Fees. Preparer charged and collected the sum of \$295 for preparation of
18 the documents in this case. The UST claims that this amount is an unreasonable fee. The
19 petition filed indicates this is a simple consumer chapter 7 case with only 2 creditors holding
20 primarily unsecured nonpriority claims for credit card debt. The debtor owns a home and \$4,000
21 in personal property. There are no secured claims or unsecured priority claims. The trustee has
22 filed a report of no distribution. The court takes judicial notice of the fact that the amount of fees
23 customarily charged by bankruptcy petition preparers for the typing of documents in consumer
24 bankruptcy cases of similar size and complexity in the Riverside Division do not exceed \$200.
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1 The court also takes judicial notice of the Bankruptcy Petition Preparer Guidelines issued by the
2 UST for the Central District of California on July 15, 2002, which state that the “charge typically
3 allowed in this district for a bankruptcy petition preparer’s services is no more than \$200,”
4 including expenses. A trial court has the power to establish a presumptive “reasonable value” of
5 legal services in consumer bankruptcies, and to limit fees to a certain level unless counsel
6 establishes that services in a particular case can justify more. In re Agnew, 144 F.3d 1013, 1013
7 (7th Cir. 1998). The trial court has the same power with respect to fees charged by bankruptcy
8 petition preparers. In re Agyekum, 225 B.R. 695 (9th Cir. BAP 1998). Had Preparer not engaged
9 in the unauthorized practice of law, the maximum fee allowable to the Preparer would have been
10 \$200 for actual, necessary services rendered in this case.
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13 Unauthorized Practice of Law. The court has the inherent power to regulate the conduct
14 of attorneys and non-attorneys providing, or attempting to provide, assistance to bankruptcy
15 debtors. This is necessary to prevent the victimization of debtors and abuse of the bankruptcy
16 process. *See, e.g., In re Agyekum*, 225 B.R. 695, 699 (9th Cir. BAP 1998); Walton v. Jones (In
17 re Shirley), 184 B.R. 613, 617 (Bankr. N.D. Ga. 1995).
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19 Under California law, the practice of law "includes legal advice and counsel and the
20 preparation of legal instruments and contracts by which legal rights are secured although such
21 matter may or may not be pending in court." In re Reynoso, 315 B.R. 544, 552 (9th Cir. BAP
22 2004); Agyekum, 225 B.R. at 701. Solicitation of information which is then translated into
23 completed bankruptcy forms is the unauthorized practice of law, whether by website or
24 otherwise, as is advising the debtor of the availability of particular exemptions or choosing those
25 exemptions. Reynoso, 315 B.R. at 552; Agyekum, 225 B.R. at 702; Glad v. Mork (In re Glad),
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1 98 B.R. 976, 978 (9th Cir. BAP 1994). *See In re McCarthy*, 149 B.R. 162, 167 (Bankr. S.D. Cal.
2 1992) (stating that the preparer's actions in referring the debtor to a comprehensive list of
3 California exemptions from which the debtor selected exempt assets was, in itself, the
4 unauthorized practice of law). Advice concerning the alternatives to bankruptcy, and the
5 difference between bankruptcy under chapter 7 and chapter 13 also constitutes the unauthorized
6 practice of law. *See In re Anderson*, 79 B.R. 482, 485 (Bankr. S.D. Cal. 1987) (stating that such
7 "acts require the exercise of legal judgment beyond the knowledge and capacity of a lay
8 person"). "If the customer does not know what forms to use or how to direct their completion,
9 then he needs legal advice." *Taub v. Weber*, 366 F.3d 966, 969 (9th Cir. 2004), *quoting Oregon*
10 *State Bar v. Security Escrows, Inc.*, 233 Or. 80, 377 P.2d 334, 340 (1962).

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13 The evidence in support of the motion establishes that Preparer gave debtor unauthorized
14 legal advice. This advice consisted of explaining to the debtor the difference between
15 bankruptcy under chapter 7 and chapter 13; soliciting financial information from the debtor, and
16 exercising professional judgment in preparing and completing the schedules and statements by
17 applying legal principles to address the debtor's individual needs; and assisting the debtor in
18 selecting exemptions, and answering the debtor's questions regarding the bankruptcy documents
19 prepared by Preparer.

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21 The court takes judicial notice that Preparer is not identified by the State Bar of
22 California Internet site, www.calbar.ca.gov, <[HTTP://WWW.CALBAR.CA.GOV](http://WWW.CALBAR.CA.GOV)> as an
23 attorney licensed to practice law in this state. The court also takes judicial notice that Preparer
24 has not been admitted to the bar of the Central District of California nor has Preparer been
25 admitted on a *pro hac vice* basis. Because Preparer is not licensed to practice law in California
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1 nor before this court, Preparer's fees of \$195 are ordered disgorged as a sanction for Preparer's
2 unauthorized giving of legal advice.

3 Pursuant to 11 U.S.C. Section 110(h)(2), Preparer is ordered to disgorge the sum of \$195
4 to the UST for the benefit of the debtor within 30 days from the date of service of the order
5 granting the motion. In the event the sum of \$195 is not timely disgorged to the UST, Preparer
6 shall be fined the additional sum of \$500 pursuant to 11 U.S.C. Section 110(h)(4).

8 Pending a disgorgement of fees and payment of sanctions in accordance with this order,
9 Preparer is prohibited from preparing, directly or indirectly, petitions, statements of financial
10 affairs, schedules, or any other documents for filing in a United States bankruptcy court or
11 United States district court for the Central District of California in connection with a case under
12 title 11 of the United States Code.
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